

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MEHDI GABAYZADEH,

Petitioner,
-against-
ORDER
13-CV-3594 (JS)

UNITED STATES OF AMERICA,

Respondent.
-----X
MEHDI GABAYZADEH,

Petitioner,
-against-
13-CV-3663 (JS)

UNITED STATES OF AMERICA,

Respondent.
-----X
APPEARANCES
For Petitioner: Mehdi Gabayzadeh, pro se
#68419-053
Cumberland Federal Correctional Institution
Inmate Mail/Parcels
P.O. Box 1000
Cumberland, MD 21501

For Respondent: James M. Miskiewicz, Esq.
United States Attorney's Office
Eastern District of New York
610 Federal Plaza
Central Islip, NY 11722

SEYBERT, District Judge:

Pending before the Court are two petitions for relief pursuant to 28 U.S.C. § 2255. The first petition was filed by counsel on behalf of Mehdi Gabayzadeh ("Petitioner") on June 24, 2013 as was assigned case number 13-CV-3594 (the "Counseled

Petition").¹ The second petition was filed by Petitioner pro se on June 27, 2013 and assigned case number 13-CV-3663 (the "Pro Se Petition"). However, according to Second Circuit precedent, "in general, when a § 2255 motion is filed before adjudication of an initial § 2255 is complete, the district court should construe the second § 2255 motion as a motion to amend the pending § 2255 motion." Ching v. United States, 298 F.3d 174, 177 (2d Cir. 2002).

Accordingly, and on consent of Petitioner, the Court hereby:

1. Construes the Pro Se Petition as an application to amend the Counselled Petition, and GRANTS that application;
2. VACATES the pending Order to Show Cause why the Counselled Petition should be granted; and
3. Directs the Clerk of the Court to docket the Pro Se Petition and Memorandum in Support in case number 13-CV-3594 and to mark case number 13-CV-3663 CLOSED.

The Court will issue a new order to show cause regarding the Pro Se Petition in due course.

The Court notes that the Pro Se Petition completely replaces and supersedes the Counselled Petition and shall be the operative Petition going forward. Further, all future filings

¹ Counsel was granted leave to withdraw at an ex parte conference before the undersigned on July 25, 2013. Therefore, both Petitions are now technically pro se.

related to the Pro Se Petition shall be docketed in case number 13-CV-3594 only.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: July 31, 2013
Central Islip, NY